**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**INCOME TAX REFERENCE No. 11 of 1997**
**With**
**INCOME TAX REFERENCE No. 13 of 1997**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**
**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**COMMISSIONER OF INCOME-TAX - Applicant(s)**
**Versus**
**AMORA CHEMICALS PVT. LTD. - Respondent(s)**

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**Appearance :**
MRS. MONA M BHATT for Applicant(s) : 1,
None for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**and**

**HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 31/08/2006**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE R.S.GARG)**

1. Mrs. Mona Bhatt, learned counsel for the Revenue. None for the respondent though served. This order shall dispose of ITRs. No. 11/97 and 13/97.
2. At the instance of the Revenue, Income-tax Appellate Tribunal, Ahmedabad Bench ”C” has referred the following questions arising out of the Income-tax Appeal No. 2142/Ahd./91, relating to assessment year 1986-87 and Income-tax Appeal No. 2976/Ahd./91 relating to the assessment year 1984-85 to this Court for the opinion of this Court.

**ITR No. 11/97:-**

“Whether on the facts and in circumstances of the case the Tribunal is right in law in holding that the rental income from Bank of Baroda was taxable under the head Income from business?”

**ITR No. 13/97:-**

“1.Whether on the facts and in circumstances of the case the Appellate Tribunal was right in holding that the rental income from Bank of Baroda was taxable under the head Income from business?

2. Whether on the facts and in the circumstances of the case, the Tribunal is

justified in upholding the direction given by the first appellate authority to allow carry forwarded business loss treating the income from leasing as income from business?"

3. The short facts necessary for disposal of the present References are that the assessee is a company, which had entered into a lease agreement with Hindu Undivided Family, after taking property on lease, it advanced certain loans to the said Hindu Undivided Family for further construction, thereafter, certain parts which could be constructed were given on lease in favour of the bank of the assessee. The rent receipt from the bank was treated by the assessee as income from business, but the contention of the Revenue was otherwise. The Tribunal, in the matter of the very same assessee for the assessment years 1979-80 to 1981-82 observed that the lease income would be taken to be income from business and it would be accordingly taxable as income from business. Relying upon the earlier judgment, the Tribunal decided the matter in favour of the assessee. The earlier matter was referred to this Court at the instance of the Revenue and was registered as ITR No. 79/88. The said matter was finally decided by this Court on 28.8.02 [reported in 2002 258 ITR 519), in favour of the assessee. As the issue is already decided by this Court in

relation to the earlier years between the same parties, we must hold that the Tribunal was right and justified in deciding the issue in favour of the assessee. Question no.2 in ITR 13/97 is dependent upon the question no.1 and as the question no.1 in both the References is decided against the Revenue, question no.2 in ITR No. 13/97 is also decided against the Revenue and in favour of the assessee. Both the References are answered against the Revenue and in favour of the assessee. They are accordingly disposed of. No costs.

**[R.S. GARG, J.]**

**[M.R. SHAH, J.]**

**pirzada/-**